

**NATIONAL ADVISORY COMMITTEE
TO THE U.S. REPRESENTATIVE TO THE
NORTH AMERICAN COMMISSION FOR ENVIRONMENTAL COOPERATION**

October 16, 1996

Honorable Carol M. Browner
Administrator
U.S. Environmental Protection Agency
401 M Street, S.W.
Washington, DC 20460

Dear Ms. Browner:

Following is the report of the fifth meeting of the National Advisory Committee to the U.S. Representative to the North American Commission for Environmental Cooperation (CEC). The Committee met September 25-26, 1996, at Seattle, Washington, in conjunction with its counterpart Governmental Advisory Committee.

CEC Work Program and Budget

Members of the Committee are pleased with the quality and breadth of work already undertaken by the CEC Secretariat but members are concerned about the ability of the institution to continue to address critical priorities with a \$9 million (U.S.) annual budget. The requirement that the CEC absorb \$2 million (CAN) for North American Fund for Environmental Cooperation (NAFEC) grants casts further doubt on its ability to adequately address needs within budget.

To ensure the continued viability of the CEC, the Committee has several recommendations related to funding. They include: (1) supporting achievement of the original goal of \$15 million (U.S.) in total annual funding; (2) encouraging timely member payment of contributions to the CEC; (3) arranging for monies for the NAFEC fund to be held in a separate trust to prevent significant reductions in the general CEC operating budget and to allow for direct and voluntary member contributions beyond the one third CEC share; and finally, (4) supporting Mexico in efforts to secure financial assistance from AID, the World Bank and similar institutions for implementation of CEC and infrastructure projects.

The Committee received the CEC's Annual Report at its meeting. Members will review the Report and may provide

suggestions later regarding preparation of the 1996 Annual Report.

Article 14-15 Guidelines

The Committee understands that the member nations agreed to review the Guidelines for possible revision after they had been in force for 18 months. Despite that agreement, the members do not believe that there has been enough activity under the provisions to fully evaluate them at this time. It is the Committee's provisional judgement that the Guidelines are working well. Further, the members wish to commend the CEC Secretariat for its balance and professionalism in the early application of the Guidelines.

If the governments undertake a review of the Guidelines at this time, the Committee urges the Council to devise an open process to ensure full public participation in the evaluation process. As a contribution to the eventual Guidelines discussion, the Committee would suggest only that the process become more open and transparent and less reliant on the use of confidential drafts.

Deregulation and Implementation of Voluntary Compliance Initiatives

The members of the National Advisory Committee applaud the CEC Council's recognition of the need for continuous improvement of environmental protection and public health in the context of NAFTA implementation (see "Enhancing environmental and public health protections", Toronto Communique, August 2, 1996.) NAFTA Article 1114 and NAAEC Article 3 make clear that the environmental benefits of regional market integration depend on maintaining and continuing to improve national laws and regulations that provide for high levels of environmental protection.

The Council's declaration comes in the context of significant changes and proposals for change in approaches to environmental regulation in all three NAFTA countries. Among the trends underlying this pressure for regulatory reform is growing interest in such regulatory techniques as devolving environmental regulatory authority to subnational jurisdictions, imposing increased economic rationality on environmental regulation, and increasing reliance on voluntary compliance programs. While some of these changes may have clear environmental benefits, others have a number of potentially negative effects. And, as all three Council members noted in Oaxaca, notwithstanding some need for

improved approaches to regulation, these calls for reform are accompanied by very real anti-environmental pressures in all three NAFTA countries.

The result is a rising concern about the consequences of a so-called "new generation" of environmental policies, and about the consistency of these evolving policies with the fundamental environmental commitments of NAFTA and NAAEC. A letter submitted by the Sierra Club to the Council in Toronto this summer articulates these concerns in a manner that deserves further direct attention by the Council.

The Council declaration on enhancing environmental and public health protections is an important and welcome initial response to these concerns. The effectiveness of the Council's declaration, however, depends on its interpretation and implementation. Accordingly, the National Advisory Committee respectfully submits the following advice:

1. Enhanced environmental and public health protections depend in the first instance on maintenance of high mandatory environmental standards and their effective enforcement. The Council's declaration should be implemented in a manner that does nothing to weaken the commitment of NAFTA parties to this fundamental tenet.
2. The CEC can play a valuable role evaluating the impacts of current or proposed changes in approaches to environmental regulation, especially with regard to the consistency of those changes with NAFTA-related environmental commitments. In particular, the U.S. should support development of a cooperative and constructive role for the CEC in monitoring compliance with those commitments, including compliance with NAFTA Article 1114. One useful method of accomplishing this is for all parties to include candid information on their fulfillment of NAFTA-related environmental commitments in the CEC Annual Report and State of the Environment Report.
3. The U.S. should support an active role for the CEC Secretariat in implementing the Council's call for development of "principles to help guide the development of a new generation of environmental regulatory and other management systems," especially thorough methods for avoiding reduction of effective environmental protection and public health standards. Such principles should be developed through a process that includes open public consultations, and that addresses both proposed regulatory changes and those

recently put in place, including their relationship to NAFTA and NAAEC obligations.

4. The U.S. should encourage CEC recognition of outstanding examples of voluntary implementation of "best practices". As with all tools of voluntary compliance, emphasis should be placed on measures of actual environmental performance.
5. Principles to be developed by the CEC to guide new approaches to regulations should include careful attention to procedures for guaranteeing effective public accountability and participation in any approaches to reform that increasingly shift environmental policy-making and compliance responsibilities away from public bodies and into the private sector.
6. Recognizing the lack of a regional mechanism for collecting and disseminating health information - particularly as related to regional commercial activities - the Committee recommends that the CEC explore means to develop a data sharing system for tracking dangers to public health. This system would need to: provide rapid access to information, including the components of hazardous substances and treatments for exposure to them; track environmental health trends and support regional health planning. It is important that such an initiative be developed with the full involvement of stakeholder communities, including grass roots health care providers, scientists, researchers, and industry representatives.

Environment and Trade

The Committee urges the Administrator and the CEC to promote the earliest possible meeting between the trade and environmental ministers of the member nations. The NAC also encourages the Administrator and other appropriate U.S. officials to seek opportunities to acknowledge the general success of the NAFTA institutions and promote them as possible models of cooperative engagement between often competing environmental and business interests in the global marketplace.

In support of the NAAEC Article 10.6(c) on the avoidance of environmental trade disputes, the Committee recommends that the CEC evaluate the benefits of dispute avoidance and resolution mechanisms that could serve as non-binding alternatives to full formal dispute settlement procedures. Such an evaluation should assess opportunities available to the CEC to provide

environmental expertise in efforts to avoid international trade disputes and to resolve such disputes where they are unavoidable.

Enhancing Public Participation in CEC and NAC Activities

The Committee wishes to acknowledge CEC efforts of the last year to reach out to ever broader audiences. In particular, the Committee acknowledges the contributions of the Joint Public Advisory Committee in bringing the perspectives of a diverse North American community into discussions of CEC activities and plans.

In general, NAFTA institutions should be commended for their success in providing forums for non-governmental organizations (NGOs) and individuals to speak. With the goal of further enhancing public involvement in CEC activities, we suggest that the Council expand pre-meeting outreach efforts, including: early circulation of the agenda; apprising local newspapers of meeting dates, times, locations and agenda; providing opportunities for public comment on meeting agendas; and, funding travel for relevant individuals, including representatives of NGOs.

The NAC has considered its own success in involving the public in meetings and believes that greater efforts are needed in the area. Consequently, the members of the Committee have adopted procedures similar to those recommended to the CEC to be used in preparing for their own future meetings.

Committee members wish to thank Werner Braun of Dow Chemical and the Council of Great Lakes Industries for presenting his draft outline for an 'Equitable Regional Public Policy Process.' Mr. Braun has made a similar presentation before the CEC. After some discussion of the proposal, the members concluded that was premature to offer comment and suggested, instead, that it might be appropriate for the CEC to consider this and other such proposals as part of the larger principles discussion.

Coordination With U.S. NAFTA Labor Advisory Group

The Committee wishes to thank Professor Edward Williams of the University of Arizona and member of the Labor NAFTA National Advisory Committee for attending the environmental NAC meeting and discussing the work plan initiatives of his own committee. As the Labor-designated liaison to the Environmental NAC, Professor Williams plans to attend future committee meetings. In turn he has invited us to designate a liaison to the Labor NAC. Dr. Margaret Wells-Diaz was selected to serve in that role with Helen Ingram acting as her alternate. The Committee recommends that funds be made available to support appropriate attendance at biannual Labor NAC meetings.

Coordination With Other National Advisory Committees

The members welcome the formation of National Advisory Committees in Canada and Mexico and wish to invite representatives from those groups to attend future U.S. NAC meetings. The Committee recommends that the Administrator encourage the CEC to find mechanisms to promote meaningful exchange among the committees including dedicating the staff necessary to ensure effective information exchange and generally foster coordination. The Committee further recommends that funds be made available to send a representative of the U.S. NAC to meetings of the Canadian and Mexican committees as those groups may desire.

At this preliminary stage, the Committee would find it useful to receive national advisory committee members lists for Canada and Mexico as well as a calendar of scheduled meetings together with proposed agendas, if available.

Identifying Funding Sources to Complement Funds Available Through the North American Development Bank (NADBank)

The Committee was pleased to learn of the recent NADBank funding of two projects certified by the Border Environment Cooperation Commission (BECC). The members appreciate the difficulties the new organizations have faced in identifying projects that meet their stringent criteria. However, the Committee also wishes to note that the demand for project financing is very great and growing. Given the fact that many needed projects will prove ineligible for NADBank funding, additional private or public funding mechanisms must be identified to fund them. Although this observation may fall outside the official charter of this group, the members are concerned by a recent General Accounting Office report on unmet needs along the U.S.- Mexico Border.

Acknowledgment of Contributions

Since this meeting marks the end of a term of appointment for most members of the Committee, the group wishes to express appreciation to several important contributors to its efforts. In particular, the members are grateful to Mary Kelly for her leadership in the role of Chair of the Committee and to Lena Nirk and Bob Hardaker for their excellent technical and logistical support to the group.

The Committee appreciates the opportunity to provide this report and recommendations to you and awaits your response.

Sincerely,

Durwood Zaelke
Acting Chair